

RESPONSE

All of claims 1-15 have been rejected as being based upon a defective reissue declaration under 35 U.S.C. 251. Specifically, it appears from further statements made in the Office Action the Examiner feels that the basis (i.e., error) cited by Applicants in the reissue declaration cannot serve as an appropriate basis for a reissue application. The Examiner further appears to be concerned with the addition of claims 13-15 and qualifies them as "broader in scope than the previously claimed subject matter."

With regard to the Applicants cited basis for a reissue application, Applicants respectfully draw the Examiner's attention to 37 C.F.R. 1.175(a), which states in part:

(a) The reissue oath or declaration in addition to complying with the requirements of §1.63, must also state that:

- (1) **The applicant believes the original patent to be wholly or partial inoperative or invalid by reason of a defective specification or drawing, or by reason of the patentee claiming more or less than the patentee had the right to claim in the patent, stating at least one error being relied upon as the basis for reissue; and**
- (2) **All errors being corrected in the reissue application up to the time of the filing of the oath or declaration under this paragraph arose without any deceptive intention on the part of the applicant.**

Emphasis added. Applicant's declaration specifically states their belief that the "original patent is partially inoperative because one of the figures is inconsistent with the remainder of the specification, claims, and abstract." It is respectfully submitted that such a statement properly satisfies 37 C.F.R. 1.175(a)(1) and 35 U.S.C. 251. Additionally, the required statement of 37 C.F.R. 1.175(a)(2) appears in both numbered paragraphs 3 and 4 of the reissue declaration. Based on the above, it is believed that all the requirements for a proper reissue application have been satisfied.

Based on certain statements in the Office Action, it is believed possible that the Examiner alternatively feels that a statement regarding the newly added claims is required.

With regard to this possibility, Applicants direct the Examiner's attention to MPEP §1414, which further discusses the requirements for a reissue declaration. It states in part:

A reissue applicant must acknowledge the existence of an error in the specification, drawings, or claims, which error causes the original patent to be defective. [Case citation omitted] A change or departure from the original specification or claims represents an "error" in the original patent under 35 U.S.C. 251....

Applicant need only specify in the reissue oath/declaration one of the errors upon which reissue is based. Where applicant specifies one such error, this requirement is satisfied.

(Emphasis added) Applicants respectfully submit that designation of the defective drawing as the error in the reissue declaration satisfies both the "change or departure from the original specification or claims" and the "need only specify one error" requirements for a proper reissue declaration.

Further, if correct that the Examiner feels the need in the reissue declaration for a statement designating the need for "broader" claims as a/the basis for the reissue, Applicants suggest that the newly added claims are not "broader in scope than the previously claimed subject matter" as believed by the Examiner. In fact, as stated in the reissue declaration, the inclusion of claims 13-15 was to ensure the presence of claimed subject matter directed to the feature described in the original specification but missing from the defective drawing (i.e., Figure 2 --- specifically, an intervening dielectric layer between each capacitor connected in parallel). As such, the claims are not "broader in scope" but rather narrow the previously allowed claims to specifically include the recitation of such a dielectric layer.

Based on the above discussion, it is respectfully submitted that the present reissue declaration is sufficient and conforms to all of the requirements of 35 U.S.C. 251 and 37 C.F.R. §§ 1.63 and 1.175, in that it provides a proper basis for the reissue application, states

that the error specified did not occur with any deceptive intent on the part of the Applicants and finally, that it provides at least one such basis.

DEFECTIVE DRAWING

In as much as the Examiner may not have been able to discern the error upon which such reissue application is based, Applicants have included herewith, in Appendix A, two colored drawings for his examination which better serves to show the missing intervening dielectric layer of originally allowed Figure 2.

As can be seen in "old" Figure 2, the capacitor array is made of capacitors stacked together and electrically connected in parallel. A pair of opposing electrode plates (as designated by the red and green layers in the drawing) and an intermediate dielectric layer (as designated by the blue layers in the drawing) serves to form each capacitor within the array. As would be known to one of ordinary skill in the art, simply stacking such capacitors would allow electrode plates of opposing charge to come into contact (as seen in "old" Figure 2 where a red plate abuts a green plate) and create a short-circuit.

Despite the ghost-lines used in the figure (to indicate a variable height stack), it is possible to determine whether a layer is supposed to be red, green or blue by looking at the edge details on the drawing. Where a layer runs the full width of the stack, it is a dielectric layer (i.e., blue). Where a layer begins on the far right and terminates before the left side of the stack, it is an electrode plate of one electrical charge (designated by green). Similarly, where a layer begins on the far left and terminates before the right side of the stack, it is an electrode plate of an opposing electrical charge (designated by red).

To overcome the inaccuracy of the drawing, "corrected" figure 2 was prepared for inclusion into the present reissue application and includes a dielectric layer (i.e., blue layer)